

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

FRANCIS TULLY, )  
Plaintiff, ) C.A. No.: 06-0581 (GMS)  
v. )  
ANTHONY COLLICK, ) TRIAL BY JURY  
Defendant. ) OF SIX DEMANDED

**DEFENDANT'S ANSWER TO COMPLAINT WITH AFFIRMATIVE DEFENSES**

1. Admitted upon information and belief.
2. Admitted upon information and belief.
3. Admitted upon information and belief.
4. It is admitted that on or about the 5<sup>th</sup> day of August, 2004, the Plaintiff was at the home

of the Defendant located at 928 Clayton Street, New Castle, Delaware. It is further admitted that the Plaintiff was at the Defendant's home after the Defendant inquired of his local Sear's store regarding replacement windows. The Defendant denies specifically inviting the Plaintiff to his home for any purpose.

5. Admitted upon information and belief.
6. Denied as stated. It is admitted that upon returning from his car, the Plaintiff appeared at Defendant's door way with an injury to his left shin.
7. Denied.
8. Answering Defendant is without sufficient information or knowledge to either admit or deny the averment of this paragraph of the Complaint.
9. Denied as stated. The Defendant did call 911 for the Plaintiff.

10. Answering Defendant is without sufficient information or knowledge to either admit or deny the averments of this paragraph of the Complaint.

11. Answering Defendant is without sufficient information or knowledge to either admit or deny the averments of this paragraph of the Complaint.

12. Answering Defendant is without sufficient information or knowledge to either admit or deny the averments of this paragraph of the Complaint.

13. Denied.

**COUNT I**

14. Answering Defendant incorporates the responses to paragraphs 1 through 13 herein by reference.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

**COUNT II**

19. Answering Defendant incorporates its responses to paragraphs 1 through 18 herein by reference.

20. Denied.

21. Denied.

22. Denied.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's causes of action are barred in whole or in part by the applicable statute of limitations.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's causes of action are barred in whole or in part by the assumption of a known risk and/or contributory negligence.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's causes of action are barred in whole or in part by the provisions of the Delaware Comparative Negligence Act.

Plaintiff was comparatively negligent in the following manner:

- (a) He failed to maintain a proper lookout;
- (b) He failed in his duty to use the due care a reasonable person should use under the same circumstances;
- (c) He walked in an area with open and obvious defective and/or dangerous conditions;
- (d) He was otherwise negligent.

**FIFTH AFFIRMATIVE DEFENSE**

If Plaintiff sustained the injuries as alleged in his Complaint, which is herein strictly denied, then such injuries were caused by the acts or omissions of entities/individuals over which/whom Answering Defendant had no control nor legal duty to control.

**SIXTH AFFIRMATIVE DEFENSE**

At all times material hereto, Answering Defendant acted with due care and proper care under the circumstances.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate his damages.

**EIGHTH AFFIRMATIVE DEFENSE**

This Court lacks jurisdiction over the subject matter of the persons to the within action.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to join indispensable, necessary and proper parties.

**TENTH AFFIRMATIVE DEFENSE**

Answering Defendant neither knew nor by reasonable care could have known of any defective or dangerous condition at its premises.

**ELEVENTH AFFIRMATIVE DEFENSE**

If a defective or dangerous condition existed on the premises as alleged in the Complaint, then such condition was open and obvious.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's injuries were not causally related to the incident at issue.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Answering Defendant hereby gives notice that it intends to rely upon such other and further affirmative defenses which become available or apparent during pretrial discovery or litigation proceedings in this action and hereby reserves the right to assert any such affirmative defenses which are incorporated herein by reference and made a part hereof as though set forth fully herein.

WHEREFORE, Answering Defendant respectfully requests that this cause of action against him be dismissed with prejudice.

REGER RIZZO KAVULICH & DARNALL LLP

*/s/ Cynthia G. Beam, Esquire*

Cynthia G. Beam, Esquire  
Delaware State Bar I.D. No. 2565  
1001 Jefferson Plaza, Suite 202  
Wilmington, DE 19801  
(302) 652-3611  
Attorney for Defendant

Dated: October 5, 2006

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## **CERTIFICATE OF SERVICE**

I, the undersigned, do hereby certify on this 5<sup>th</sup> day of October, 2006 that two true and correct copies of Defendant's Answer to Complaint with Affirmative Defenses have been served electronically and/or by first class mail, postage prepaid, upon the following:

Frank Marcone, Esquire  
2530 N. Providence Road  
Media, PA 19063

## REGER RIZZO KAVULICH & DARNALL LLP

/s/ Cynthia G. Beam, Esquire  
Cynthia G. Beam, Esquire  
Delaware State Bar I.D. No. 2565  
1001 Jefferson Plaza, Suite 202  
Wilmington, DE 19801  
(302) 652-3611  
Attorney for Defendant

Dated: October 5, 2006

(REV. 07/89)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS OF THE REVERSE OF THE FORM.)

<b>I (a) PLAINTIFFS</b>		<b>DEFENDANTS</b>			
<b>FRANCIS TULLY</b>		<b>ANTHONY COLICK</b>			
<b>b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF</b> <u>N/A</u> (EXCEPT IN U.S. PLAINTIFF CASES)		COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <u>NEW CASTLE</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED			
<b>(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)</b> <u>Frank Marcone, Esquire, 2530 N. Providence Road, Media, PA 19063</u>		<b>ATTORNEYS (IF KNOWN)</b> <u>Cynthia G. Beam, Esquire c/o Reger Rizzo Kavulich &amp; Darnall LLP, 1001 Jefferson Plaza, Suite 202, Wilmington, DE 19801</u>			
<b>II. BASIS OF JURISDICTION</b> (PLACE AN X IN ONE BOX ONLY)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN X IN ONE BOX) (For Diversity Cases Only) FOR PLAINTIFF AND ONE BOX FOR DEFENDANT			
<input type="checkbox"/> 1 U.S. Government <input type="checkbox"/> 3 Federal Question <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicated Citizenship of Parties in Item III)		PTF DEF Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1 Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3		PTF DEF Incorporated or Principal Place Of Business in This State <input type="checkbox"/> 4 <input type="checkbox"/> 4 Incorporated and Principal Place Of business in Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6	
<b>IV. CAUSE OF ACTION</b> (CITE THE U.S. CIVIL STATUE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE DO NOT CITE JURISDICTION STATUTES UNLESS DIVERSITY)					
<b>V. NATURE OF SUIT</b> (PLACE AN X IN ONE BOX ONLY)					

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Manne <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument  <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans  (Excl. Veterans) <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability  <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Manne <input type="checkbox"/> 345 Manne Product Liability  <input type="checkbox"/> 350 Motor Vehicle Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury-- Med Malpractice <input type="checkbox"/> 365 Personal Injury --  Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability  <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Property Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws  <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
			<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 422 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc.  <input type="checkbox"/> 460 Deportation  <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange
			<b>LABOR</b>	<input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation  <input type="checkbox"/> 865 RSI (405(g))
			<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWV (405(g)) <input type="checkbox"/> 864 SSID Title XVI  <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS -- Third Party 26 USC 7609
				<input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> Other Statutory Actions

<b>VI. ORIGIN</b> (PLACE AN X IN ONE BOX ONLY)					
Appeal to District Transferred from					
<input type="checkbox"/> 7 Judge					
from					
<input type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input checked="" type="checkbox"/> 5 another district (specify) <u>Eastern District of PA</u>					
Magistrate Litigation					

<b>VII. REQUESTED IN</b>		<b>CHECK IF THIS IS A</b>		<b>CLASS ACTION</b>	<b>DEMAND \$</b>	Check YES only if demanded in complaint:
<b>COMPLAINT:</b>		<input type="checkbox"/> UNDER F.R.C.P 23		<b>JURY DEMAND:</b> <input type="checkbox"/> YES <input type="checkbox"/> NO		

<b>VIII. RELATED CASE(S)</b> (See instructions)						
<b>IF ANY</b>		JUDGE _____		DOCKET NUMBER _____		

DATE <u>October 5, 2006</u>	SIGNATURE OF ATTORNEY OF RECORD <u>/s/ Cynthia G. Beam, Esquire (Delaware State Bar I.D. No. 2565)</u>				
UNITED STATES DISTRICT COURT					